

ARKANSAS SUPREME COURT

No. CR 07-372

RONALD DONELL McJAMES
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered May 31, 2007

PRO SE MOTION FOR APPOINTMENT
OF COUNSEL [CIRCUIT COURT OF
PULASKI COUNTY, CR 2002-1805, HON.
WILLARD PROCTOR, JUDGE]

APPEAL DISMISSED; MOTION MOOT

PER CURIAM

In 2003, judgment was entered reflecting that appellant Ronald Donell McJames had entered a plea of guilty to capital murder for which a sentence of life imprisonment without parole was imposed. More than eighteen months after the judgment was entered, appellant filed in the trial court a pro se petition for postconviction relief pursuant to Criminal Procedure Rule 37.1. The petition was denied on April 27, 2005. Appellant appealed to this court from the order, and we dismissed the appeal on the ground that the Rule 37.1 petition was not timely filed. *McJames v. State*, CR 05-939 (Ark. Oct. 27, 2005) (per curiam).

On October 16, 2006, appellant filed in the trial court a pro se petition to correct an illegal sentence pursuant to Ark. Code Ann. 16-90-111 (Supp. 2005). The court denied relief, and on November 21, 2006, appellant filed a motion for reconsideration. The motion was also denied, and appellant has lodged an appeal in this court from the order. Now before us is appellant's motion for appointment of counsel.

We dismiss the appeal because the petition to correct sentence pursuant to Ark. Code Ann. 16-

90-111 (Supp. 2005) was not timely filed. The motion for appointment of counsel is moot. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (per curiam); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (per curiam).

A claim that a sentence was illegal must be raised in a petition filed in the trial court within ninety days of the date of entry of judgment if the conviction was obtained on a plea of guilty. Ark. R. Crim. P. 37.2(c) (1995); *see Reed v. State, supra* (holding that Ark. R. Crim. P. 37.1 superseded the time limits imposed in Ark. Code Ann. § 16-90-111 for correction or reduction of a sentence). The time limits set out in Rule 37.2(c) are jurisdictional in nature, and the circuit court may not grant relief on a untimely petition for postconviction relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989). The court could have dismissed appellant's petition as an unauthorized second petition for postconviction relief under Ark. R. Crim. P. 37.2(b), but even if appellant's petition had been the first such petition filed, it was not filed within the time period allowed to claim that a sentence was illegal, and thus appellant was entitled to no relief under the statute.

Appeal dismissed; motion moot.